IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 843 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISH SHANTILAL LOHANA

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for appellant.

MS GAJJAR, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE A.L.DAVE

Date of decision: 11/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The subject matter of challenge in this appeal is the judgment and order delivered by the learned Additional Sessions Judge, Rajkot, in Sessions Case No.117 of 1991 on September 7, 1992, convicting the present appellant (original accused No.1) for offence punishable under Section 302 of Indian Penal Code and Section 135 of Bombay Police Act.

2. The facts of the case can be narrated, briefly, thus:-

2.1 A First Information Report came to be lodged with Rajkot City "A" Division Police Station on April 12, 1991, at about 16.00 hours. According to that F.I.R., the incident in question occurred on that very day at about 14.00 hours near Luvana Chowk in Rajkot City. The report was lodged by Jayaben, wife of Mohanlal Ramdas. According to her, she is residing in Luvana Para area of Rajkot City with her husband, two sons - Devidas and Khodidas. Her eldest daughter-Sharda and next her to Dinu are married. Next to Dinu is Jyotsna, who is married at village Kothi and the youngest daughter is Bharti. In the complaint, there was reference to an incident that had occurred on the previous day, i.e. April 11, 1991. In that incident, on previous evening, when the complainant's daughters were returning home after attending to nature's call, some boys seating near the bridge teased them. They, therefore, reported the incident at home to the deceased. Deceased-Mohanlal thereafter went there to rebuke the boys. There the appellant and his associates took up quarrel with him. The deceased was rescued by his nephew-Dinesh, who was passing by coincidently. In respect of this incident, separate complaint also came to be lodged. On the day of incident, at about 2.00 P.M., the complainant's husband-Mohandas was at home. So also Jyotsna and Bharti. At about 2.00 P.M., Mohandas went out of the house to attend to nature's call and soon thereafter, there were shouts and, therefore, the complainant and her daughter went out to see, what had happened. The complainant saw accused No.1 - the present appellant running away after giving blow to the deceased with a knife. The complainant was followed by Jyotsna, who also saw the appellant running away from the place. The deceased was, therefore, taken to the hospital immediately by the complainant and Jyotsna in an auto rickshaw. Mohanlal succumbed to the injuries at the hospital while under treatment. Jyotsnaben, therefore, lodged the complaint. On basis of that complaint, offence was registered and investigation started. Upon collecting the evidence, the Investigating Agency found

evidence against the appellant and three other accused persons, namely, Girish Shantilal Luvana, Munno alias Bhipin Shantilal Luvana and Mano alias Manoj Narandas Kumbhar. All of them were, therefore, charge sheeted by the police before learned Judicial Magistrate, First Class, Rajkot and Criminal Case No.2771 of 1991 was registered before him. The learned Judicial Magistrate, First Class committed the case to the Court of Sessions as the offences for which the accused persons were charge sheeted were triable exclusively by the Court of Sessions. Upon committal to the Court of Sessions, Sessions Case No.117 of 1991 came to be registered. In that case, charge was framed against the four accused persons for offences punishable under Section 302 read with Sections 34, 120-B and 114 of Indian Penal Code and Section 135 of the Bombay Police Act. The accused persons pleaded not guilty to the charge and expressed their desire to face the trial. The prosecution led oral and documentary evidence in support of its case. The prosecution examined the following witnesses :-

(1) P.W. No.1-Y.D. Mehta (Ex.13).
(2) P.W. No.2-Maganlal Nanjibhai (Ex.21).
(3) P.W. No.3-Bhalabhai Arjanbhai (Ex.22).
(4) P.W. No.4-Dahyalal Manubhai (Ex.23).
(5) P.W. No.5-Harshad Kantilal (Ex.25).
(6) P.W. No.6-Bhupendra Kalyanji (Ex.27).
(7) P.W. No.7-Ramjibhai Motibhai (Ex.28).
(8) P.W. No.8-Rajendrasinh B. Zala (Ex.29).
(9) P.W. No.9-Pradhyuman Vashrambhai (Ex.31).
(10) P.W. No.10-Jaysukh Mansukhlal (Ex.32).
(11) P.W. No.11-Pravin Govindbhai (Ex.33).
(12) P.W. No.12-Mahendra N. Mehta (Ex.35).
(13) P.W. No.13-Jayaben Mohandas (Ex.38).
(14) P.W. No.14-Bharti Mohandas (Ex.39).
(15) P.W. No.15-Dinesh Vasantdas (Ex.40).
(16) P.W. No.16-Devidas Mohandas (Ex.41).
(17) P.W. No.17-Jyotsnaben Kishore (Ex.43).
(18) P.W. No.18-Bachubhai Naranbhai (Ex.44).
(19) P.W. No.19-Jagish S. Gondalia (Ex.46).
(20) P.W. No.20-Ramesh B. Parmar (Ex.49).
(21) P.W. No.21-Chetan Hasmukhlal (Ex.50).
(22) P.W. No.22-Trikamdas Babulal (Ex.52).
(23) P.W. No.23-Ramsajivan Lalaram (Ex.53).
(24) P.W. No.24-Bhanushanker Laxmanbhai (Ex.54).
(25) P.W. No.25-Govind Motibhai (Ex.64).
(26) P.W. No.26-Manjibhai Somaji (Ex.68).
(27) P.W. No.27-Chandjiram Nobatram (Ex.71).

2.2 The prosecution led following documentary

evidence:-

(1) Complaint of Jayaben Mohandas.
(2) Letter written to the Medical Officer for conducting the post-mortem of the dead body.
(3) Inquest Panchnama.
(4) Medical Report of the Civil Surgeon.
(5) Panchnama of the place of offence.
(6) Panchnama for taking possession of clothes of the deceased.
(7) Receipt of handing over of dead body.
(8) Entry No.13 of the Station Diary.
(9) Copy of N.C. registration.
(10) Copy of entry No.8 of Hospital Police Chowki.
(11) Arrest Panchnama of Accused No.1.
(12) Arrest Panchnama of Accused Nos.2 and 3.
(13) Arrest Panchnama of Accused No.4.
(14) Discovery Panchnama.
(15) P.M. Report.
(16) Letter written to the Mamlatdar for preparing the map of the place of offence.
(17) Report of the Medical Officer.
(18) Medical report of Blood Sample.
(19) Receipt of muddamal for analysis.
(20) Letter written to Forensic Science Laboratory for analysis of muddamal.
(21) Forwarding of muddamal.
(22) Report of the Deputy Director, Forensic Science Laboratory.
(23) Analysis Report.
(24) Result of Serological Analysis.
(25) Notification of the Police Commissioner.
(26) Map of the place of offence.

2.3 After the evidence was led, the statements accused persons under Section 313 of the Code of Criminal Procedure were recorded for affording opportunity to explain the circumstances against them.

2.4 After considering the evidence led by the prosecution and the arguments advanced by the prosecution and the defence, the learned Additional Sessions Judge came to a conclusion that the prosecution had failed to prove the charge against accused Nos. 2, 3 and 4, i.e. Girish Shantilal Luvana, Munno alias Bipin Shantilal Luvana and Mano alias Manoj Narandas Kumbhar and acquitted them of those charges.

2.5 The learned Additional Sessions Judge, however, came to a conclusion that the charges against original accused No.1 (present appellant) for offences punishable

under Section 302 of Indian Penal Code and Section 135 of the Bombay Police Act were successfully proved by the prosecution and, thereafter, after hearing the accused on question of sentence, sentenced the appellant-accused with life imprisonment for offence punishable under Section 302 of Indian Penal Code with a fine of Rs.500/and ordered him to undergo further imprisonment for one month in case of default in payment of fine. No separate punishment was imposed for the offence punishable under Section 135 of the Bombay Police Act. Aggrieved by the said judgment and order, original accused No.1 has preferred this appeal.

3. Learned counsel, Mr. Buddhbhatti, appearing for the appellant has taken us through the evidence led by the prosecution. He has assailed the judgment and order on the ground that the prosecution has not led correct evidence on the incident and its genesis. To substantiate his say, he submitted that the timings as emerging from the prosecution case indicate that the incident had not taken place at the time when it is alleged to have taken place. He submitted that, according to the complainant and Jyotsna, who claim to be eye-witness, the incident occurred at about 2.00 P.M., whereas if the evidence of police witnesses-Ramsajivan and Bhanushanker Laxmanbhai is considered, it is clear that Bhanushanker intimated Ramsajivan at 13.00 hours to attend the dead body. Mr. Buddhbhatti submitted that this indicates that the deceased had reached the hospital before 13.00 hours and, therefore, the incident must have occurred prior thereto. The complainant and the witness-Jyotsna, therefore, are not giving correct version about the incident. Mr. Buddhbhatti submitted that the story of these two witnesses being eye-witnesses to the incident also, therefore, would become doubtful. Mr. Buddhbhatti submitted that the two witnesses do not account for any injury on thigh of the deceased as noticed in the postmortem notes and, therefore, their story about they being eye-witnesses to the incident also becomes further doubtful.

3.1 Mr. Buddhbhatti submitted that Jyotsna was married just 15 days prior to the incident and, therefore, her presence at her parental house at the time of the incident ought not to have been accepted. In order to substantiate his version about Jyotsna and Jayaben being not eye-witnesses, Mr. Buddhbhatti submitted that blood stains are not found on their cloth and, therefore, their presence at the time of the incident becomes doubtful, which has been ignored by the Trial Court.

3.2 Assailing the F.I.R., Mr. Buddhbhatti submitted that the F.I.R. is given late. The F.I.R. and the version given by the witnesses in their depositions do not appear to be true for the above stated reasons. Further, the F.I.R. is given after deliberations only with a view to implicate the accused persons falsely and, as admitted by the Investigating Officer, the complainant has admitted in her further statement before him that Shantilal was falsely implicated by the complainant initially, but on their further statement having found that Shantilal was falsely implicated, he was neither arrested nor charge sheeted by the police. This being so, Mr. Buddhbhatti submitted that the prosecution witnesses have no regard for the truth, have a tendency to implicate innocent persons falsely and, therefore, the possibility of these witnesses implicating the accused-appellant falsely cannot be ruled out. This aspect is ignored by the learned Additional Sessions Judge and, therefore, the conviction may be set aside.

3.3 Mr. Buddhbhatti submitted that the appellant had no enmity or motive against the deceased. He further submitted that no test identification parade was arranged by the Investigating Agency. The Trial Court has overlooked the fact that the accused was not residing nearby and, therefore, the conclusions arrived at by the Trial Court are not correct.

3.4 By way of alternative submission, Mr. Buddhbhatti submitted that considering that only one blow is alleged to have been given by the appellant and that too, on non-vital part of the body, it cannot be said that an offence under Section 302 of Indian Penal Code is constituted. He can at the most be held guilty of offence punishable under Section 304, Part-II of I.P.C. and, therefore, the appeal may be allowed to that extent.

4. Ms. Gajjar, learned Additional Public Prosecutor, appearing for the respondent-State submitted that the appellant had reason to assault the deceased. Another incident had occurred on the previous day of the incident and on that day also, the deceased was assailed upon by the appellant along with this accomplice. Fortunately, the deceased was rescued by Dinesh, his nephew. For that purpose, a separate complaint was also lodged. Ms. Gajjar submitted that the incident was witnessed by the complainant as well as Jyotsna. Presence of both these witnesses was natural. The incident occurred just outside the house of the complainant. Presence of Jyotsna cannot be doubted only

because she was married recently. Ms. Gajjar submitted that, according to the prevailing custom, a newly wedded bride visits her parental house shortly after the marriage and there is nothing to doubt her presence. Ms. Gajjar submitted that the deposition of the complainant and Jyotsna cannot be doubted only because they happen to be relatives of the deceased. They are related witnesses and not interested witnesses. Ms. Gajjar submitted that the medical evidence supports the prosecution case. Both the complainant and Jyotsna have seen the accused with a knife at the place of the incident. No one else was there. They have no reason to falsely implicate the accused and let go the real assailant and, therefore, their depositions may be accepted.

4.1 Ms. Gajjar submitted that the accused and the complainant or Jyotsna are not strangers and, therefore, there was no question of holding any test identification parade. She submitted further that an attempt is made to indicate that the incident has occurred much prior to the time indicated by the witnesses. And for that purpose, support is sought from two police witnesses, who said that intimation was given at 13.00 hours to keep a watch on the dead body, meaning thereby that the dead body was already in the hospital at 13.00 hours. Ms. Gajjar submitted that if the medical case papers are seen, they clearly indicate that the dead body reached the hospital at 1.55, i.e. 13.55 hours. Apart from that, the entry made on telephonic Wardhi given by hospital Constable also indicates that entry was made at 14.20 hours. It is also indicated that death occurred at 14.10 hours and, therefore, the admissions made by these two witnesses seem to be under some error and the Trial Court has taken this aspect into consideration while considering this contention of the defence. Ms. Gajjar submitted that witnesses tend to add or exaggerate to their original version out of enthusiasm only with a view to ensure that their deposition is not thrown out as unbelievable and, therefore, only because there is some frill or embroidery or exaggeration, the entire deposition may not be thrown off.

5. The appellant has assailed the judgment and order mainly on the ground that the details of incident given by the so-called witnesses, namely, Jayaben and Jyotsnaben are not trustworthy. It was contended that, according to these witnesses, this incident occurred around 2 'o clock in the afternoon whereas, as per deposition of two police witnesses, namely, Bhanushanker Laxmanbhai (Ex.54) and Ramsajivan (Ex.53), the message was sent by Bhanushanker to Ramsajivan at 13.00 hours to

attend to the dead body at the hospital and, therefore, the incident must have occurred prior to 13.00 hours and, therefore, witnesses Jayaben and Jyotsnaben cannot be accepted as eye-witnesses. It is true that these two witnesses have stated in their respective depositions as stated above. But their say is not supported by any contemporaneous material. Not only that, but as stated by Bhanushanker, no entry in the Station Diary was made by him about the message sent by him at 13.00 hours to Ramsasjivan to attend the dead body at the hospital. On the contrary, according to this very witness, the entry was made in the Station Diary at 14.20 hours following a telephone Wardhi from police constable Ashok Patel of Hospital Chowki and, according to that entry, the deceased was brought to the hospital in emergency section and expired at 14.10 hours while under treatment. Apart from this, there is another material that requires consideration and that material is in form of the medical case papers of the hospital. A perusal of these medical papers (Ex.18) clearly indicates that the dead body was brought to the hospital at 1.55 P.M. and, therefore, the contention that the incident must have occurred prior to 13.00 hours does not find support from contemporaneous material. For whatsoever reasons, these two police witnesses have stated in their deposition that the message was sent and received at 13.00 hours. The medical case papers also indicate that the patient expired at 2.10 P.M. Under the circumstances, the contention that the witnesses-Jayaben and Jyotsnaben are not reliable because they are given wrong time of the incident cannot be accepted. Mistake or infirmity in deposition of one witness cannot weaken the evidential value of deposition of another witness.

6. Another contention that is canvassed on behalf of the appellant is that witness-Jyotsna was married just about 15 days prior to the incident. It is true that this aspect is undisputed. But only because Jyotsna was married a fortnight prior to the incident, no inference can be drawn that her presence at her parental house was not possible. Jyotsnaben is examined at Ex.43 wherein she categorically states that she saw the appellant running away after giving blow to her father with a knife on the left side. She has been cross-examined searchingly on the incident, but she has remained unshaken. In cross-examination, she admits that her marriage took place about 15 days prior to the incident in the month of Falguna and she stayed at her matrimonial house for about 15 days, but no specific suggestion was put to her that she was not present at the place of the incident or no question was put to her as to when she

came back from her matrimonial house or no suggestion was put that she was at her matrimonial home. Only on this admission of marriage as stated above, an attempt is made to eliminate her presence at the time of the incident, which is difficult to accept when consistently she has deposed about the incident and has stood the test of cross-examination. It may also be noted that presence of this witness was stated by Jayaben-the complainant, in her deposition. The Investigating Officer-Chandakiram Yadav (Ex.71) has also stated that he recorded the statement of Jyotsnaben after drawing the Panchnama of the place of incident. The contention about the presence of Jyotsnaben at the place of incident, therefore, cannot be doubted, as argued on behalf of the appellant.

7. The third contention that is raised is regarding lack of support to the version given by the eye-witnesses from the medical evidence. It is contended that neither Jayaben nor Jyotsnaben speak about any injury on thigh of the deceased. That injury is noted in the postmortem notes and, therefore, they cannot be accepted as eye-witnesses. In this regard, it may be noted that Jayaben, in her deposition, says that, on hearing the shouts, she ran out of the house and saw Satish (appellant herein) running away with a blood stained knife. Likewise Jyotsnaben (Ex.43) says that, when she was going out of the house to throw away garbage she saw the appellant in company of Girish, Munno and Manoj and her father was shouting and, at that time, the appellant had a knife with which he gave blow on the left side of the deceased and, thereafter, the appellant ran away. Thus, what these witnesses have seen is only giving of the blow on the left side of the trunk of the deceased and, thereafter, running away of the appellant. What happened prior thereto may not have been witnessed by these witnesses, but that would not render their depositions untrustworthy in respect of what they deposed to have witnessed. It would also be worth to note that the Inquest Panchmana at Ex.15 is also slient about the thigh injury, which is noted in the postmortem notes. What is observed in the Inquest Panchnama is the injuries on the left side of the trunk and no other injury was noted. The thigh injury is noted for the first time in the postmortem note. When the Inquest Panchnama is drawn and the injury has gone unnoticed, the eye-witnesses cannot be disbelieved for not stating about this injury, as it may have escaped their attention as well or, as stated above, they may have reached the place after that injury was caused. After all, postmortem is done by an expert and he takes his own time to examine the dead body, whereas the incident occurred all of a sudden and

the time is short and would depend on observation power of the witness. Because a witness fails to mention about a particular injury, which is not noticed even in the Inquest Panchnama, he/she cannot be disbelieved for other injuries for which he/she accounts for. The contention raised on behalf of the appellant, therefore, cannot be accepted.

8. A contention is raised about the late F.I.R. The deceased was taken to hospital at 1.55 P.M. During the course of treatment, he expired at 2.10 P.M. and, as can be seen from the Station Diary Entry, the message was sent at 2.20 P.M. Thereafter, the Investigating Officer is informed and he initiates the investigation and, ultimately, the complaint is recorded at 16.00 hours. An attempt was made to indicate that when the complainant was at the hospital, the Investigating Officer also went to the hospital and put some questions to her, but did not record the F.I.R. immediately and, later on, the F.I.R. is framed after deliberation. In this regard, Ex.57, the Station Diary Entry, may be looked into. Station Diary Entry No.14 is made at 16.00 hours. This is regarding the recording of F.I.R. and registering of this particular offence. Deposition of Police Inspector, Yadav, the Investigating Officer, is at Ex.71. He has been cross-examined at length. But nothing comes out to doubt the recording of the F.I.R. at the time indicated therein. This aspect was argued before the learned Additional Sessions Judge and has been dealt with by him. We have been taken through the impugned judgment and we are in agreement with the finding given by the learned Additional Sessions Judge and the reasoning adopted therefor. The contention, therefore, cannot be accepted.

9. It is contended that an attempt is made to falsely implicate Shantilal by the complainant. This aspect is brought on record by the defence during cross-examination of the Investigating Officer, who admits that in the further statement, the complainant has stated that she had given name of Shantilal at the hospital as she was in a disturbed state of mind. It is contended that the witness has falsely implicated innocent person and, therefore, no reliance can be placed on this witness. In support of this contention, reliance is placed on the case of B.N. Singh v. State of Gujarat, AIR 1990 SC 1628 and it is urged that the accused-appellant may be acquitted by allowing this appeal.

9.1 The above contention is difficult to be accepted

in the present case. We have examined this argument qua the complainant. It may be noted that the complainant has not implicated Shantilal in her deposition nor has she implicated Shantilal in the F.I.R. Even the Station Diary Entries based on information received from the duty constable at the hospital (Ex.57 and 59) are seen, they do not appear to be verbatim reproduction of what may have been stated by the person disclosing the incident. There does not appear to be any tendency on part of the prosecution witness to falsely implicate an innocent person. If it was so, the complainant would also have implicated Shantilal in the F.I.R. as well as in her deposition. Jyotsnaben, whose deposition lends support to complaint also would have done the same. But that is not done by these witnesses. Besides this, there is no other factor to distrust the evidence of these witnesses implicating the appellant in the incident. The deposition, otherwise found trustworthy, cannot be discarded on this count.

9.2 In B.N. Singh v. State of Gujarat (supra), the Apex Court did not accept the version given by the three eye-witnesses as they were found to be interested witnesses and their version in their deposition was found to be improbable in light of medical evidence. In the instant case, the facts are altogether different. Jayaben cannot be branded as interested witness simply because she happens to be related witness. Her deposition cannot be disbelieved on basis of such admission by the Investigating Officer of having recorded further statement of the complainant stating that name of Shantilal was given by her as her husband was recently murdered. Even what is stated in the further statement would not indicate a tendency of falsely implicating innocent person. The plight of a lady who has witnessed her husband being murdered and her mental state soon thereafter cannot be overlooked and even what has happened cannot be viewed as a deliberate attempt to implicate an innocent person. In fact, she has clarified the situation on that very day when her attention is drawn to the entries Ex. 57 while recording her further statement by the Investigating Officer, which reflect her regard for the truth. The contention that an attempt is made to falsely implicate Shantilal - an innocent person - and, therefore, the entire case of the prosecution may not be accepted is not possible to be accepted.

10. Last but not the least, it was alternatively submitted that only one blow was given by the accused and that too, on a non-vital part of the body, namely, back and, therefore, the case would not fall within the

definition of murder. At the most, it would fall within the definition of culpable homicide not amounting to murder as defined under Section 304 Part-I or IV of Indian Penal Code.

10.1 To appreciate this contention, certain factors have to be kept in mind. From the evidence on record, there is nothing to indicate that the case falls within any of the explanations enumerated in Section 300 of Indian Penal Code. Further, it is indicated that the case does not fall in any of the four categories indicated in Section 300 of Indian Penal Code defining murder. In this regard, the decisions rendered by the Apex Court in Harendra Nath Mandal v. State of Bihar, AIR 1993 SC 1977 and State of Andhra Pradesh v. Rayavarapu Punnayya & Another, AIR 1977 SC 45 may be profitably referred to.

10.2 In State of Andhra Pradesh v. Rayavarapu Punnayya (supra), the Apex Court indicated as to how a case can be decided to fall within the purview of Section 302 or 304 of Indian Penal Code. Their Lordships suggested following steps and we quote:-

> "Whenever a Court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299.
>
> If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300.
>
> If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder' punishable under the first or the second part of Section 304,

depending respectively, on whether the second or the third Clause of Section 299 is applicable.

If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300 the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of Section 304, Penal Code."

10.3 For a case to fall within the definition of culpable homicide not amounting to murder punishable under Section 304, I.P.C., it is required to be indicated that the case does not fall within any of the categories enumerated in Section 300 or that the case falls within any of the exceptions indicated in Section 300 of Indian Penal Code and, for that purpose, facts of the case will have to be examined.

10.4 In the instant case, it is true that only one knife blow is alleged to have been witnessed by the witnesses, but in this regard, it would be relevant to note that medical evidence indicates that the said injury was sufficient in ordinary course of nature to cause death of a human being.

10.5 In order to ascertain whether the case would fall within the definition of culpable homicide not amounting to murder, various factors will have to be taken into consideration. These factors can be the size of the weapon used, the force with which the weapon is used, the site of injury, the time and place of incident, justification in presence of accused at that place at that time, etc.

10.6 In this case, the knife which is used had a length of 9 inches, the handle comprising of 3.3 inches and the blade of the size of 5.7 inches, which was pointed. The postmortem notes indicate that the external injury was of the size of 1.5" x 0.5" cavity deep and the internal injury corresponding the said external injury cuts the intercostal muscles of the 8th space joint. It had resulted into collapse of the left lung and has also cut left lobar vessels and left first bronchus. The site of the injury was on the left side of back of the chest at the level of 8th intercostal space and one inch away and laterally from the tip of transverse process of 9th thoracic vertebrae. This would indicate that the knife had entered from the back of the chest and had gone deep enough to cut the lobar vessels and left first bronchus. This indicates the force with which the blow was given.

The size of the weapon and the force with which the blow was given would collectively indicate the intention of the appellant of causing death of the deceased.

10.7 There is yet another factor which would reflect the intention. The incident has taken place near the house of the deceased. The accused appellant does not stay in near vicinity. His presence at that spot at the time of the incident with a knife and then his act of assailing the deceased with history of the incident of the previous day speaks volumes about his intention on part of the accused. Added to this is the earlier referred factor, namely, the force with which the blow was given. The accused/appellant had no reason to be there at that place of incident, armed with a deadly weapon like the muddamal knife. The evidence does not indicate any altercation or heated exchange of words and straightaway blow is given with knife which is found to be sufficient in ordinary course of nature to cause death and which has, in fact, caused death of the deceased. We are, therefore, of the firm view that the case cannot fall within the purview of Section 304 either Part I or Part II of I.P.C. In fact, the case is very similar to illustration (c) given under 4thly of Section 300 of Indian Penal Code. Here there is medical evidence to indicate that the injury was sufficient in the ordinary course of nature to cause death of a human being. There is evidence to indicate that the appellant gave a knife blow and there is evidence to indicate that this was done intentionally by him. The deceased died out of the injury and, therefore, the appellant was required to be held guilty of murder, as has been done by the Trial Court.

11. In view of the foregoing discussion, we are of the view that no error is committed by the learned Additional Sessions Judge in convicting the appellant for offence punishable under section 302 of Indian Penal Code and Section 135 of Bombay Police Act. We have gone through the record of the case and the judgment. We agree with the reasoning adopted by the learned Additional Sessions Judge and conclusions arrived at by him. We do not see any error committed by the learned Additional Sessions Judge either in interpreting or evaluating the evidence and, therefore, we see no reason to interfere with the same.

12. The appeal, therefore, must fail. The judgment and order passed by the learned Additional Sessions Judge, Rajkot, in sessions Case No.117 of 1991 on September 7, 1992, convicting the appellant for offence

punishable under Section 302 of Indian Penal Code and Section 135 of Bombay Police Act and sentence imposed is hereby upheld and confirmed. The appeal is dismissed.

[M.H. KADRI, J.]

[A.L. DAVE, J.]

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